

## **Contractor Agreement — Draft Contract Terms and Scope of Work**

The main body of the Contractor Agreement will need to be aligned with contract terms that the final selected Program Operator (Operator) would require as part of their normal contracting process. In addition to such standard terms from the Operator, language addressing the following items is required for the main body of the Agreement between the Contractor and the Operator. Operator will provide RCPA its resulting Contractor Agreement template for review and approval prior to Operator executing any contract with Contractors.

### **Draft Contract Terms**

Required language for main body of the Contractor Agreement:

#### **Basic Requirements**

- Contractor is not an agent or employee of Program Operator, Partner Utility, RCPA, or ABAG.
- Contractor understands and accepts that this Agreement and attachments are for the benefit of the Participants and subsequent occupants of upgraded premises, notwithstanding the fact that this Agreement is made between the Contractor and the Program Operator.
- Contractor will give all notices and comply with all laws, ordinances, rules, and orders of any public authority bearing on the performance of the work.
- All work must comply with all local, state, and federal codes, manufacturers' specifications, and accepted installation practices.
- Any Contractor staff or agent that may enter Participants' homes to complete work must first pass a Program Operator-approved background check.
- Contractor will hold specific necessary and required licenses and professional certifications and qualifications required by State of California in addition to those identified by Operator to install Improvements.
- Contractor is responsible for the cost of any subsequent training sessions for new staff after the initial session. Once trained, Contractor is responsible for ensuring all relevant staff have been trained by the Program Operator and follow proper protocols.
- The Program Operator (Operator) will notify Contractor of any changes to the Program Manual at least 30 days before the change(s) goes into effect. If Contractor finds any conflict between either this Agreement and Scope of Services and the Program Manual, the Contractor will immediately notify the Operator for written clarification.
- Contractor is responsible for maintaining each Property free of waste materials or rubbish generated during the installation of the Improvements on a daily basis. Contractor shall remove and properly dispose of all debris and any hazardous materials in accordance with all applicable local, state, and federal laws and regulations.

## Pricing

- Discussion that for Contractor bid prices for labor and improvement costs:
  - Participants have the right to use any Program Contractor willing to meet program guidelines.
  - For all Contractors whose price is equal to or less than the program price, if Participants seek a recommended Contractor, a rotating list will be used to assign Contractors to Participants.
  - Any Contractor whose price is above the maximum set by the Program may participate as long as the Participant pays a copay equal to the amount the Contractor's price(s) exceed the Program's maximum price.
  - Contractors with higher pricing will be allowed to charge their rates, but the Program Operator may inform Participants of all Program Contractors offering services at or below the maximum Program rate and that Contractors whose prices are higher and will require copays.
- Contractor shall certify that the proposed rates reflect the payment of prevailing wage rates where applicable for services rendered to Participants.

## Work Performance

- Neither Program Operator nor Utility will be liable for any decisions made or actions taken by Contractor. Contractor will have sole control over the manner and means of performing the work under this Agreement, and will complete it according to its own means and methods of work. Contractor is solely responsible for Contractor's employees, subcontractors, and Contractor agents' work notwithstanding Participant's or Program Operator's acceptance of work.
- Contractor is responsible for using Program Operator-approved improvements.
- Contractor will guarantee that all materials and equipment furnished under this Agreement will be new, and that all work will be of good quality and free from faults and defects.
- Contractor will start an installation only after obtaining approval by the Program Operator that proposed work is appropriate and all Agreements and forms have been completed and are in compliance with California's right to cancel laws.
- Contractor is responsible for maintaining each Property free of waste materials or rubbish generated during the installation of the Improvements on a daily basis. Contractor shall remove and properly dispose of all debris and any hazardous materials in accordance with all applicable local, state, and federal laws and regulations.
- Contractor shall guarantee its workmanship for a period of one year (including all parts and labor) starting from the date of Operator's final payment to Contractor for the Improvements.

## Payment

- Compensation shall be directly tied to installed Improvements approved and verified by Operator according to the rates and procedures set forth in Contractor Agreement.
- Terms for what constitutes when a project shall be considered complete and subject to payment.

- Terms defining that a Contractor's acceptance of payment represents a full release of the Participant, Property Owner, Operator, RCPA/ABAG, and Partner Utility from all claims.
- Contractor shall extend to Operator, Participant, and Owner if different, all manufacturers' warranties for material and equipment installed. Contractor agrees to provide copies of all warranty information to Operator, Participant, and Owner if different, should such information exist. Said warranties will not in any way limit Contractor's obligations to uphold Contractor's one-year workmanship guarantee.
- Requirement that Contractor shall waive its right to file a Mechanics Lien against Locations for work completed or otherwise initiated as part of the Program and shall submit to the Operator a completed Waiver of Mechanics Lien for each Participant it serves as part of Program
- Address instances of Contractor submitting projects for payment when the Improvements have not been installed according to the Participant Agreement.

### **Contractor Errors and Complaint Protections**

- Contractor will be solely responsible for errors, other than those caused by inaccurate Participant inputs, regardless of whether the project was inspected or approved by the Operator.
- Participant, Building Owner if different, and ABAG are intended third-party beneficiaries of the Contractor/Operator Agreement and will have rights of enforceability against Contractor for Improvements installed under the terms of this Agreement.
- Any unresolved problem with the Participant or the Operator not covered by this Agreement may be resolved in the courts or by using the Program's alternative dispute resolution process if so requested by, and only by, the Participant. A description of the alternative dispute resolution process is available online at \_\_\_\_\_ or from the Operator.
- Indemnification language as required by ABAG, RCPA, Partner Utilities, and Program Operator.
- Insurance coverage as required, with insurance certificates naming Operator, RCPA and its Board of Directors and staff, ABAG, and other Program parties as additionally insured.
- Contractors State License Board (CSLB) approved bond with a bonding agent registered in the State of California
- Terms for termination of Contractor agreement and requirements for how Contractor shall cease work, including:
  - Return of all Operator or Utility data, documents, objects, materials, or other tangible things within XX days of termination
  - Payment for Improvements completed and requirements for work approved but yet to be completed.

## Draft Contractor Scope of Work

This Scope of Services identifies the roles, responsibilities, and other anticipated work that will be performed by the Contractor. In addition to this Scope of Services, additional guidance for Contractor duties, documents, tools, and forms are found in the Water Upgrades Save Program Manual (Program Manual). Contractor is responsible for understanding and carrying out the Contractor duties described below. Contractor should immediately contact Program Operator (Operator) with any concerns it has about carrying out these responsibilities or if it finds these responsibilities are in conflict with the Program Manual.

### Task 1: Program Training and Onboarding

#### **TASK 1A: PROGRAM TRAINING**

The Contractor and/or its designated representatives will attend and satisfactorily complete the Program training course. This is required for all Contractors and their staff. The Contractor is responsible for ensuring it and its representatives use Program-approved Improvements and follow Contractor-related Program protocols.

While the initial certification training is offered prior to program implementation at no charge to Contractors and staff, subsequent training sessions (e.g., required for additional or replacement staff) set-up and presented by the Program Operator will require a per-person, per-session charge. All Contractor staff who will be interacting with Program Participants, Building Owners, and building occupants must attend the training.

The need for training on topics other than the initial certification may arise. Should this be the case, initial training will similarly be offered at no charge to the Contractors and staff, with subsequent sessions on the topic offered for a per-person, per session charge.

#### **TASK 1B: ONBOARDING**

Contractors must provide Operator the following information: Contractor license number and status, proof of bonding, and certificates of insurance naming Operator, RCPA/ABAG, and other Program parties as additionally insured. Contractor will ask the Operator any questions the Contractor may have about the Program and the Agreement. Contractor will also ensure that it adheres to Program standards.

### Task 2: Marketing, Outreach, and Engagement

Contractor may market its services to Partner Utility customers. All advertising must be approved in advance by the Operator in accordance with the Program's branding and styling protocols and guidelines to ensure brand and styling consistency. Acceptable outreach includes co-branding with the Operator on existing program materials and letterhead, email marketing, and website branding. Unacceptable outreach methods would include any activities that harass Participants (e.g., spamming), misrepresent the Program, or involve offers or savings claims not approved in advance by the Operator.

The Operator and the Partner Utility will conduct the primary marketing activity for the Program. Contractors will be notified of Program and Partner Utility marketing efforts as they happen. The key message for the Program will focus on the opportunity to purchase water efficiency products with no upfront payment, no new debt, and none of the risks Participants typically associate with retrofit projects.

## Task 3: Pre-Installation Preparation and Site Visit

### **TASK 3A: GENERAL PREPARATION**

Contractor will work with three types of Participants:

1. Single Family Residential
2. Standard Multifamily Residential
3. Do It Yourself (DIY) Multifamily Residential

For Single Family and Standard Multifamily Participants, Contractor will install all agreed up on Improvements. For DIY Multifamily Residential Participants, these Participants will install Improvements using a third party and the Contractor will assist the Operator with work oversight in the form of pre- and post-installation site visits. The process is described in further detail in Task 3C.

Contractors are responsible for purchasing Program-approved materials and Improvements. For DIY Multifamily Participants, the Building Owner, its local contractor, or its staff is responsible for picking up program materials from a participating store. Improvements must always be new and meet the Program's warranty requirements. In addition, Contractor will secure and pay for all permits, governmental fees, licenses, and inspections necessary for the proper installation and completion of the Improvements. These costs must be included in Contractor's bid price as established in the Participant Agreement or be absorbed by the Contractor. Contractor will give all notices and comply with all laws, ordinances, rules, and orders of any public authority bearing on the performance of the work.

Contractor is responsible for assessing whether it can do the work on any project safely and effectively. Change orders will only be allowed if the ratio of customer savings to costs remains within the program guidelines (i.e., 80 percent rule) Contractor will give all notices and comply with all laws, ordinances, rules, and orders of any public authority bearing on the performance of the work

### **TASK 3B: CONTRACTOR-IDENTIFIED PARTICIPANTS**

If Contractor is working with Single Family or Multifamily Participants it has independently identified that have not already been pre-qualified by Operator, Contractor may connect Operator and Participant for Operator to verify eligibility. The Contractor must not make any savings or performance claims beyond those approved by the Operator. The Contractor must abide by upselling limitations and provide Participants referrals to relevant efficiency and energy programs, including applicable rebate programs. Operator may opt to inspect the Property prior to approval. If Contractor installs Improvements prior to Operator's verification of eligibility, Contractor assumes any liability associated with California's right of rescission and for starting work without

first obtaining Operator's approval. Once Participant is verified as eligible, Participant can proceed through the program as a pre-qualified Participant would per Task 3C below.

### **TASK 3C: PRE-INSTALLATION SITE VISIT FOR PRE-QUALIFIED PARTICIPANTS**

Operator will pre-qualify all Customers for the Program. A pre-installation site visit is required for all Customers prior to starting any work. For Participants identified by the Contractor and pre-qualified by the Operator, Contractor will have first opportunity to conduct the site visit for that Participant. For all other pre-qualified Participants, Operator will assign pre-installation site visits to Contractors on a rotating basis as described in the Program Manual.

Contractors shall perform pre-installation site visits duties including but not limited to:

- Confirm the type of Improvements and the number and location of qualifying Improvements.
- Verify that existing conditions and equipment performance are consistent with Participant's reported conditions related to water use.

Additional protocols are established in the Program Manual but can be summarized as follows:

- Single Family Pre-Qualified Participants
  1. Customer is pre-qualified by Operator
  2. Operator populates Participant Agreement and sends to Customer
  3. Customer signs a Participant Agreement
  4. Operator may perform pre-installation inspection
  5. Operator assigns Contractor to complete Site Visit (Operator accompanies on Contractor's first Site Visit)
  6. If no pre-existing conditions prohibit installation of Improvement as identified in Participant Agreement, Contractor is able to complete installation during Site Visit
  7. If pre-existing conditions prohibit installation of Improvements or Scope of Work in Participant Agreement changes, Contractor and Participant must work to secure Operator approval of Change Order, providing the Change Order does not risk the customer paying more than they will save in the short and long term.
- Standard Multifamily Pre-Qualified Participants
  1. Customer is pre-qualified by Operator
  2. Operator populates Intent to Participate Form and sends to Customer (this form is only used for multifamily projects)
  3. Customer signs Intent to Participate Form
  4. Operator assigns Contractor to complete Site Visit (Operator accompanies on Contractor's first Site Visit)
  5. Contractor develops Scope of Work and submits to Operator
  6. Operator may perform pre-installation inspection as a check on Contractor assessments
  7. Operator populates Participant Agreement and sends to Customer
  8. Customer signs Participant Agreement and Contractor completes work. If Customer does not sign Participant Agreement, Contractor is paid Site Visit expense.
  9. If pre-existing conditions prohibit installation of Improvements or Scope of Work in Participant Agreement changes, Contractor and Participant must work to secure

Operator approval of any Change Order, providing the Change Order does not risk the customer paying more than they will save in the short and long term

- **DIY Multifamily Pre-Qualified Participants**
  1. Customer is pre-qualified by Operator
  2. Operator populates Intent to Participate Form and sends to Customer (this form is only used for multifamily projects)
  3. Customer signs Intent to Participate Form
  4. Operator assigns Contractor to complete Site Visit, which will be paid by Participant whether they proceed with the improvements or not (Operator accompanies on Contractor's first Site Visit).
  5. Contractor develops Scope of Work and submits to Operator
  6. Operator may perform pre-installation inspection as a check on Contractor assessments
  7. Operator populates Participant Agreement and sends to Customer
  8. Customer signs Participant Agreement and completes work on their own.
  9. Operator or Contractor conducts post-installation site visit at the expense of the Participant (Optional Task 7)

*If prevailing wage is required for Multifamily projects:* In order to ensure Contractors understand the difference between financing installations through the Program with a Program Contractor charging prevailing wages and Participants using the DIY option to install program-sourced Improvements with their own staff or Contractors, the Program Operator will provide Contractors and Participants with a Program-developed one-page table itemizing the different consumer assurances offered by the Program that are not available outside of the Program.

### **TASK 3E: SENATE BILL 407**

Senate Bill (SB) 407 requires non-compliant plumbing fixtures in multifamily and commercial properties be replaced with water-efficient plumbing fixtures as of January 2019. As an additional value to customers who decide to participate and even those customers who decline to participate, the Program provides an SB 407 report. The SB 407 report is generated based on reported information from the Contractor, stating on the day of the site visit or final inspection what, if any, fixtures do not meet the SB 407 state requirement, and the unit or other location of non-compliant fixtures. Contractor will work with Operator on completion of report, which will be issued by the Operator. All multifamily properties where pre-installation site visits are conducted will receive a report.

## **Task 4: Improvement Installation**

### **TASK 4A: IMPROVEMENT INSTALLATION SITE VISIT**

Contractor will ensure that it is in full adherence to the terms of the Participant Agreement before performing work, including, but not limited to ensuring the acquisition of permits, licenses, insurance and bonds, etc. Contractor is responsible for installing authorized Improvements for Participants at a standard program price as agreed to in the Participant Agreement for a specific project location. Contractor shall provide for the installation of Improvements for each Participant as described in the Participant's Approved Efficiency Improvements Form, or the Participant's



Change Order Form authorized by the Operator if required because of changes to approved Improvements.

Contractor shall be solely responsible for determining the auxiliary materials needed for installation of the Improvements, and the means and methods of installation. Contractor understands that Operator or Utility requires specific resource-efficient products and thresholds for eligible Improvements. Contractor can suggest alternative products to Operator as long as it can install them within the approved pricing schedule and Operator determines they are of comparable quality and meet the efficiency thresholds established in the Pricing Schedule, and meet or exceed the manufacturer's warranty of the products specified in the Pricing Schedule.

Contractor is responsible for providing each Participant and occupants with proper education and supporting documentation including how to properly use and maintain installed Program Improvements to ensure Participant and the Utility receive expected savings, and the products meet Participants' requirements. This may include but is not limited to:

1. Operation and maintenance instructions or manuals for installed Improvements,
2. Plumbing system maintenance instructions,
3. A written copy of irrigation scheduling recommendations, seasonal irrigation system inspection and maintenance, seasonal plant maintenance requirements, and replenishment schedule for any mulch groundcover if specified.

When installation of Improvements is completed, the Program Contractor shall notify the Program Operator in accordance with their Contractor Agreement.

## Task 5: Quality Assurance and Quality Control (QA/QC)

### **TASK 5A: QA/QC PROCESS**

Quality assurance and quality control (QA/QC) will be completed for all projects. Contractors are required to participate in these activities. Site inspections for standard pathway projects will take place for 10 percent of sites during pre-installation and for 10 percent of sites during post-installation through an independent inspection carried out by the Program Operator. Mentoring will be provided during pre-installation inspection for any Contractor's first project; that first project will also always receive a post-installation inspection. Operator will conduct post-installation verifications by phone for all other projects not receiving a post-installation inspection. The same project is not guaranteed to receive both the pre- and post-installation inspection

The Operator will check to see all work has been completed in accordance with Program requirements. Before approving Program Contractor payment for any installations, the Operator will address discrepancies between the Participant Agreement and Participant's comments or observed conditions, per the requirements of the Operator Agreement and the Contractor Agreement. Contractor will work with the Operator to remedy these discrepancies.

### **TASK 5B: REPAIRS**

At any time during the assessment of On-bill Charges, should the Program Operator or Partner Utility determine that the installed Improvements are no longer functioning as intended and that the Participant, Successor Customer, occupant, or building owner did not damage or fail to



maintain the Improvements in place, the Contractor may be requested to conduct repairs. If such repairs are determined by Operator to be necessary within the term of the Contractor's Parts and Labor warranty, such repairs will be covered by that warranty. If the repairs are not within the term of Contractor's warranty, the Contractor will inspect the site, provide a binding quote to the Operator, and if authorized, complete the repair for that price.

If the Partner Utility or Program Operator determines the Participant, Successor Customer, occupant, or Owner, or Participant's invited guests damaged or failed to maintain the Improvements in place, Contractor may conduct said repairs and will receive payment from the Participant, not the Operator.

## Task 6: Record-Keeping and Payment

Program Contractors who install Improvements will submit all required forms to notify the Operator that work has been completed and to start the invoicing process. Contractors are responsible for accurately documenting all program activity using program forms and securing Participant signatures as necessary. Contractors shall submit to the Operator a completed Waiver of Mechanics Lien for each Participant it serves as part of Program. Once all program documentation is reviewed and approved by the Program Operator, the Program Operator will then authorize RCPA to pay the Program Contractor during the next payment cycle.

Contractor shall maintain any records, work products, communications, or other relevant information to each Project and the Program. Contractor will also provide Operator access to this information to enable Operator to evaluate and ensure the integrity of the Program at any time.

Contractor agrees to make a good faith effort to participate in Operator follow-up surveys for the purpose of evaluating the effectiveness of the Program and to provide information requested by the Operator. Contractor is also responsible for providing Operator with notice of complaints or praise Contractor receives from Utility Participants and copies of any written correspondence.

## Task 7 (Optional): DIY Post-Installation Inspections

Program Contractors will have the option to additionally perform post-installation inspections on DIY Multi-Family projects. Contractor will need to conduct an on-site inspection to confirm that improvements installed by the DIY Participant meet the Program's standards in workmanship and products used. The DIY Participant will be responsible for the cost of this inspection and any necessary subsequent inspections as a result of errors identified by Contractor. To opt-in as a DIY Post-Installation Inspections Contractor, there will be an additional section and signature required on the Contractor Agreement.

## Task 8 (Optional): On-Call Availability

Program Contractors will have the option to opt-in as an On-call Program Contractor. Additional responsibilities would include serving a broader region that are insufficiently covered by other Program Contractors, and timely responses within a 24-hour period.

**Exhibit B: Participant Agreement**

**Exhibit C: Program Improvements and Pricing Schedule**

**Exhibit D: Waiver for Mechanics Lien**

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